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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUL 11 1994

PP Docket No. 93-253

In the Matter of

Implementation of Section 309(j)
of the Communications Act --
Competitive Bidding

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PP Docket No. 93-253

To: The Commission

**OPPOSITION OF PAGING NETWORK, INC.
TO PETITIONS FOR RECONSIDERATION OF THIRD REPORT AND ORDER**

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Paging Network, Inc. ("PageNet"), by its attorneys, hereby opposes certain petitions for reconsideration of the Third Report and Order, FCC 94-98, released May 10, 1994 ("Report and Order" or "R&O"), in this proceeding, insofar as those petitions (1) seek retention of single round sealed bid auctions for 12.5 kHz unpaired response channel licenses, but on a market-specific basis; (2) seek to have designated entities defined to include small businesses, accorded a 25% bidding credit on all response channels on which they are high bidder(s); (3) seek preferences for rural telephone companies and additional preferences, in particular bidding credits, for small businesses in bidding on narrowband PCS spectrum; and (4) seek an interpretation of the Commission's new rule on settlements in PCS narrowband proceedings that would permit collusion among FCC Form 175 applicants for narrowband PCS.

PageNet herein addresses arguments of Tri-State Radio Co. ("Tri-State"), petition filed on June 22, 1994; Association of Independent Designated Entities ("AIDE"), petition filed on June 23, 1994; Rural Cellular Association ("RCA"), petition filed on June 22, 1994; and U.S. Intelco Networks, Inc. ("USIN"), petition filed on June 22, 1994. ^{1/}

I. SUMMARY OF ARGUMENT

PageNet advocates that an oral sequential auction with all licenses within an MTA or BTA auctioned simultaneously should be employed for the 12.5 kHz licenses. This would give bidders sufficient information to determine the appropriate value of the licenses, easily permit the aggregation of frequencies at the heart of Tri-State's proposal, and would assure that the maximum value would be realized from the auction.

Bid Mechanism for 12.5 MHz Response Channels

Tri-State's proposal to modify the sealed bid mechanism proposed by the Commission for assigning 12.5 kHz channels is both unnecessarily complex and fraught with the potential for post-auction litigation. Its most prominent flaw, however, is that, like the Commission, it relies on a single, sealed bid mechanism. As PageNet set forth in its Petition for Reconsideration, and expands upon here in response to Tri-State's proposal, there is no

^{1/} The limited focus of PageNet's pleading should not be construed as agreement with or opposition to other points made by petitioners for reconsideration and not addressed herein.

benefit to using a single sealed bid mechanism for assigning these licenses.

Under the single sealed bid mechanism, licensees will have to do expensive market research well in advance of the auction to determine: (1) who is eligible to bid; (2) their present system design; (3) their proposed system design; and (4) what market share they might anticipate in their market(s) as a result of enhancements using the response channel(s) -- all in order to know what value each bidder might put on these channels. Where, as in virtually all licenses for MTAs, there are scores of eligible licensees, this task becomes exorbitantly expensive.

Such efforts would, of course, be ultimately futile in any event because even the best industrial intelligence will not be able to accurately predict what these applicants will bid for these licenses. And, where there is no accurate information on which to rely, participating in an auction for these licenses in a single, sealed bid format will be like playing a game of pure chance. PageNet submits that established companies should not have to rely on chance in order to obtain the frequency inventory they need in order to provide the next generation of messaging services.

Applicability of Bidding Credits

PageNet strenuously opposes Tri-State's attempt to bootstrap preferences granted for minorities and women in narrowband PCS into an entitlement to a bidding credit of 25% for minorities,

women and small businesses for the 12.5 kHz response channels. Those efforts run counter to the Commission's purpose in allocating these frequencies in the first instance -- that is, to let incumbents in the paging industry have an opportunity to provide next generation paging services. A 25% bidding credit on all MTA and BTA 12.5 kHz response channels would assure that the Commission's purposes were not met -- only small businesses, rural telephone companies, women and minorities would win those licenses because every other bidder would have had to overpay by 26% in order to win. As PageNet understands it, the preference rules were meant to promote new entry in new frequency assignments, certainly not to favor one group of incumbents over another when existing services are at issue. Furthermore, the Commission has justified its selective application of certain preferences to specific designated entities and those determinations should not be expanded.

Likewise, PageNet opposes AIDE's request to apply such preferences to all narrowband PCS channels.

Additional Preferences for Designated Entities

The Commission has correctly determined that rural telephone companies that are not owned by women or minorities or that are not in the small business category of designated entities do not need preferences to ensure the participation of these larger rural telephone companies in narrowband PCS services. Similarly, the Commission has correctly not extended additional preferences to small businesses and rural telephone companies.

Section 309(j) of the Communications Act requires only that the Commission "consider" the use of certain preferences for designated entities and does not require that any such entity be given a preference. The Commission's determination, that larger rural telephone companies do not need any of these incentives to participate in the auction process because of the advantages they already possess from existing infrastructure of plant and operations, is eminently reasonable. That determination fully meets the statutory requirement that the designated entities and a "wide variety of applicants" be given the "economic opportunity" to participate in the telecommunications industry.

Settlement Negotiations During Bidding Process

The Commission has wisely adopted anti-collusion rules to maintain the integrity of its competitive bidding process for the licensing of narrowband PCS frequencies. During the pendency of FCC Form 175 short-form applications for PCS licenses, these rules effectively prohibit settlement negotiations and major amendments that settlements would require. These rules are cross-referenced in and condition the new rule Section 24.429(b) that includes the possibility of a settlement agreement as the basis for FCC approval for ownership changes or for the amendment or dismissal of pleadings or applications.

The Commission's aforementioned scheme of application processing would permit settlement negotiations and settlements only before Form 175 applications are filed or after an applicant

has been selected at auction and has filed a Form 401 long-form application for the frequencies won at auction. This limitation, which the Commission should state more clearly in Section 24.429(b), is reasonable, and it is consistent with Section 309(j) of the Communications Act. The Commission's policy on settlements in auction proceedings is clearly distinguishable from the Commission's settlements in non-auction contexts that do not raise the collusion problem.

II. THE COMMISSION SHOULD EMPLOY ORAL SEQUENTIAL AUCTIONS FOR 12.5 KHz UNPAIRED MTA AND BTA RESPONSE CHANNEL LICENSES

In its Petition for Reconsideration, PageNet opposed the Commission's decision to use single round sealed bid auctions for 12.5 kHz unpaired response channel narrowband PCS licenses. PageNet did so because that methodology deprives paging companies of the ability to rationally participate in the auctions.

Tri-State also sought reconsideration of the Commission's response channel license auction methodology because, in its view, bidders could not easily aggregate frequencies across regions, that "exceedingly complicated bidding strategies" would be required of bidders, and that no default rule and reallocation mechanism for defaulted licenses is specified. Tri-State Petition (pp. 9-10). Despite its arguments against the Commission's auction method, Tri-State's proposed remedy would retain the Commission's use of single round sealed bids. However, the winning bidders in each MTA and BTA would select the specific

response channels, with the highest bidder selecting the first frequency, the second highest bidder the second frequency, and so on. Tri-State also advocates that minority and female-owned businesses and small businesses be given a 25% bidding credit for all response channel bids. Tri-State Petition (p. 18).

Tri-State correctly recognizes some of the inherent deficiencies in the Commission's proposal, but its own substitute does not make the auction process any more rational than that which the Commission proposed. The continued reliance on sealed bids, simply put, would reduce the 12.5 kHz auctions to a game of chance. The problems set forth by both PageNet and Tri-State cannot be corrected if single round sealed bid auctions are retained. The reasons for this have their basis in the industry's objectives and the Commission's concerns set forth above.

First, despite the purported simplicity of the sealed bid auction rules to the Commission, it imposes unrealistic, unworkable costs on the bidders. ^{2/} At a minimum, depending on whether one looks at the Commission's or Tri-State's proposal, bidders must try to estimate what the fifth highest bid will be and then bid slightly above it. This is an enormously difficult calculation, since it involves estimating the valuations of all competitors. Estimating the values, in turn, would require a prospective bidder to determine: (1) who is eligible to bid; (2)

^{2/} In fact, the Commission is imposing a higher cost on bidders for these 12.5 kHz response channels than for the nationwide narrowband PCS licenses, which are of higher value.

their present system design; (3) their proposed system design; and (4) what market share they might anticipate in their market(s) as a result of enhancements using the response channel(s) -- all in order to know what value each bidder might put on these channels. Serious bidders with high values could easily guess incorrectly and, as a result, would fail to get a license. ^{3/} The complexity is magnified for bidders attempting to aggregate many licenses. One reason for the complexity is that no information is revealed in the auction process. This prevents bidders from revising their bids in light of new information. This will result in bidders having to expend significant resources to determine value that is different to different bidders and therefore is virtually meaningless. In the end, bidders will have expended such resources, yet submitted bids with no meaningful competitive information.

Second, with the Commission's sealed bid proposal, efficient aggregation of frequencies across MTAs or BTAs is impossible, since single round sealed bids make it impossible for a bidder to purchase the same response channel across regions. Also, a bidder probably will not be able to purchase all the licenses it desires for an efficient aggregation.

The Tri-State proposal increases the possibility that a bidder will be able to aggregate multiple frequencies, but eliminates any possibility that a bidder who desires a specific

^{3/} Alternatively, they could bid high enough that their bid exceeds all rational bids, exacerbating the winner's curse associated with sealed bids.

frequency in one or more MTAs would be able to achieve that result. Furthermore, it limits the opportunities of companies who want adjacent frequencies.

In order to allow bidders the opportunity to participate rationally, and to achieve the certainty that, if they value the license most highly, they will win, the Commission has to return to the ascending bid methodology on which it has relied for all other narrowband frequencies.

In any event, the Commission's basis for "low" value of the 12.5 kHz licenses is unfounded. As PageNet and Tri-State's arguments both indicate, those channels are important to existing one-way paging operators. Also, a significant number of bidders are eligible in every MTA. These factors point to higher values in the licenses than contemplated by the Commission and they also reduce any concerns over collusive bidding.

In light of the deficiencies with both the Commission's single round sealed bid and Tri-State's proposal, PageNet advocates the adoption of an oral sequential auction for the 12.5 kHz response channels. That method would reduce or eliminate many of the problems with the single round sealed bid method. An oral sequential auction gives bidders the opportunity to receive and to react to a great deal of information, thereby eliminating the need to do extensive market valuation of competitors which, given the high degree of uncertainty about the value of these frequencies, would likely be of little value. The oral sequential auction

format is, from the industry's perspective, far less expensive and far more rational. Much of the gaming inherent in the sealed bid auction is unnecessary in the oral auction. Further, it is not significantly more costly for the Commission to administer than a sealed bid auction.

PageNet recommends the following specific auction procedures for the MTA response channel licenses. ^{4/}

1. The MTA licenses would be sold in a sequence of 51 open outcry auctions. The order of the auctions would be from largest to smallest MTA. The auctions would be conducted over two days, as set forth in Table 1, attached hereto. More time is given for the early, more valuable MTAs. Subsequent rounds of the bidding, which correspond to the smaller MTAs, could be shortened even more, as fewer bidders are expected to participate and the need for analysis of other parties' bids decreases.

2. In each open outcry auction, the four licenses (A, B, C, and D) within the MTA would be auctioned *simultaneously*. The auctioneer would display the four high bids and bidder numbers, as well as the minimum bids.

3. To bid, a bidder would raise a bidding card and shout out the license and amount ("C for \$x") or just the license ("D"), implying the minimum bid on D. An outcry of

^{4/} The design is similar to the oral sequential auction to be used for the IVDS MSA licenses set forth in the Commission's Fourth Report & Order in PP Doc. No. 93-253, FCC 94-99, released May 10, 1994. Electronic ascending bid auctions would be equally appropriate.

"A and B" would make the bidder the high bidder on A and B at the minimum bid. A bidder could be the high bidder on up to two licenses.

4. Bid increments would be adjusted by the auctioneer based on bidding activity.

5. The bidding would stop when bidding activity ceases on all licenses and the auctioneer declares the auction closed. The four high bidders then would sign a High Bid Acknowledgment Form and submit an up-front payment.

A key element of this design is the simultaneous sale of all licenses within an MTA using channel specific bids. This would give the bidders maximum flexibility in expressing values for multiple channels, adjacent channels, or particular channels. This is of critical value to existing paging licensees and demonstrates a major shortcoming of Tri-State's proposal, since bids would not be frequency specific. Bidders could value a second license more or less than the first, might prefer adjacent channels, or might value having the same channel across an aggregation of MTAs. This design would allow bidders to express these valuations in a simple and transparent way. As a result, auction efficiency and government revenues are enhanced.

The BTA auction would follow the same procedures as the MTA auction with the following modifications:

1. The BTA licenses would be sold in a sequence of 492 open outcry auctions. The BTA licenses would be grouped by

MTAs. In each bidding session, all BTAs within a given MTA would be auctioned in sequence from largest to smallest. This is a natural grouping given the importance of MTAs in defining geographic markets for PCS. It also would foster an MTA aggregation of BTAs. The bidding sessions would be conducted from largest to smallest MTA as set forth in Table 1, attached hereto. The 492 auctions are conducted over four days (about five minutes per BTA).

2. In each open outcry auction, the four licenses (E, F, G, and H) within the BTA would be auctioned simultaneously, using channel specific bids.

Using the oral sequential auction for the MTA and BTA response channels is consistent with the Commission's design philosophy expressed in the Second and Third Reports. The oral sequential auction offers many of the advantages of the simultaneous multiple round auction, and may, from the Commission's perspective, have lower operational cost. It would also have enormous experimental value. Should the simultaneous multiple round auction have unforeseen problems, the oral sequential auction would be a natural alternative.

III. NO ADDITIONAL PREFERENCES SHOULD BE GRANTED

Tri-State's proposal to grant specified designated entities a 25% bidding credit for the response channels should be rejected. The credits for designated entities were designed to increase

participation in the new frequencies offered by competitive bidding. Since the eligibility for the response channels is restricted to existing paging entities for use with their existing services, additional preferences have no place here. In addition, credits for other offerings apply only to specific frequencies. Tri-State and AIDE would apply credits here to all the response channels. This would have the effect of imposing a 25% increase in the amount of the bids for all the response channels, requiring all successful, non-designated entity classes to overbid by 26% in order to win.

Similarly, by limiting the bidding credit for 50 kHz paired or unpaired channels to specific frequencies, the Commission has implicitly recognized that, in order for a non-preference entity to win the frequencies on which bidding credit apply, it would have to overpay by 26%. Certainly, just as it may be appropriate to have preferences for truly underrepresented classes, it is appropriate to let entities already in the paging/messaging business, and who have already made substantial investments in their business, also participate in the auctions. Tri-State's proposal to grant a 25% bidding credit on all frequencies, pure and simple, would act to exclude those who have built this industry in the first instance.

Furthermore, AIDE's claim in its petition (p. 15) that the Commission vastly underallocated those narrowband frequencies on which bidding credits should apply, assuming less than all, is

incorrect. AIDE does note, correctly, in its petition (p. 16) that the Commission has allowed bidding credits to be used on one frequency per channel grouping. AIDE neglects to admit, however, that one license per channel grouping equates to approximately 30% of the nationwide licenses essentially earmarked for entities using bidding credits, approximately 37% of regional licenses, and almost 45% of the MTA spectrum available. Certainly, AIDE cannot legitimately claim that this amount of spectrum is too little.

AIDE's claim that small businesses deserve a bidding credit on nationwide licenses, in addition to the bidding credit already permitted for minorities and women, is similarly unavailing. PageNet takes no position on the Commission's rationale for excluding small businesses, e.g. that the costs of building a nationwide system would be prohibitive. Rather, PageNet notes that small businesses, as defined by the Commission in the Second Report & Order at ¶¶ 266-288, have had ample opportunity to participate in paging. In fact, numerous companies which PageNet believes either are now or were recently classified as small businesses, have just been coordinated by NABER, and therefore highly likely the recipients of 929 MHz nationwide licenses. 5/

The paging industry, in fact, was built on small businesses. PageNet, now the largest and fastest growing paging company, was formed as an independent company just over 12 years ago. It now

5/ See, e.g., Applications of American Paging, Arch Communications, First National Paging, Comtech Paging, Map Mobile Communications, Inc., Map Paging Co., Inc.

has revenues and subscribers well in excess of all other paging companies, including those which are Bell Operating Company affiliates. And while PageNet's growth has been the most spectacular, it is by no means alone in its success. Other small businesses have entered the paging market and succeeded as well. In short, there have always been opportunities for small businesses in paging, and thus no reason to grant preferences for small businesses in that industry now. 6/

IV. THE COMMISSION SHOULD ADHERE TO ITS DECISION TO DENY ANY DESIGNATED-ENTITY PREFERENCE TO RURAL TELEPHONE COMPANIES AND ANY ADDITIONAL PREFERENCES TO SMALL BUSINESSES

RCA and USIN sought reconsideration of the Commission's ruling denying rural telephone companies preferences as a "designated entity" pursuant to Section 309(j)(4)(D) of the Communications Act, 47 U.S.C. § 309(j)(4)(D). AIDE requested similar relief for both small businesses and rural telephone companies of those preferences that are not currently available to them. The Commission explained in the Report and Order (¶ 71):

We have decided not to provide bidding credits or other separate preferences for rural telephone companies bidding on narrowband PCS spectrum because we conclude that given the relatively modest build-out costs, such preferences are unnecessary to ensure the participation of rural telephone companies in the provision of this service to rural areas. Moreover, in view of the fact that rural telephone companies may use their existing infrastructure to provide integrated narrowband PCS services in their rural service areas,

6/ Although PageNet does not believe any preferences for small business is appropriate for narrowband PCS, it is not asking the Commission to withdraw the opportunity of small business to pay for their licenses in installments.

should they choose to do so, we believe that they will have ample opportunity to participate in narrowband PCS. Rural telephone companies will, however, be eligible for bidding credits if they are owned by women or minorities. They may also qualify for installment payments if they satisfy the eligibility criteria for small businesses.

PageNet submits that the Commission has reasonably assessed the relative needs of the designated entities and adequately explained the reasons for its decision not to give auction preferences to rural telephone companies.

In Section 309(j)(4)(D) of the Act, the Congress mandated that the Commission "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services." This provision does not state that each of these designated entities needs and can benefit from identical forms of assistance to assure such "opportunity to participate." 7/

Indeed, the Act does not mandate preferences for any of the designated entities, and therefore does not mandate that small businesses or rural telephone companies receive some or all forms of assistance. The Act requires only that the Commission "consider the use of tax certificates, bidding preferences, and other procedures," to ensure an opportunity to participate (47 U.S.C. § 309(j)(4)(D)).

7/ This point applies also to refute AIDE's arguments against other determinations by the Commission with respect to preferences for designated entities.

Consistent with the public interest and the characteristics of the proposed service, the Congress intended for the designated entities, among a "wide variety of applicants," to have an "economic opportunity" to participate in the telecommunications industry through services licensed under the competitive bidding system (47 U.S.C. § 309(j)(4)(C)). As explained below, PageNet believes that rural telephone companies -- those that do not otherwise qualify for preferences found by the Commission to be needed by small businesses and businesses owned by women or minorities -- will have that economic opportunity to participate without preferences and that small businesses do not need the additional preferences not awarded to them.

The law and agency explanation set forth above suffices to answer AIDE's contentions in its petition (pp. 14-19) that are essentially that the Commission has not justified its decision not to give all designated entities all preferences.

RCA asserts in its petition (p.5) that there is "utterly no logic" to the Commission's statement denying a preference to rural telephone companies. "Build-out costs and existing infrastructure have absolutely nothing to do with whether an entity is successful in obtaining a narrowband PCS license," it states (*id.*). USIN states much the same in its petition (p.5). "Similarly, the efficiencies created by the ability of a telephone company to provide integrated services . . . bear no relationship to the ability of a small, rural telephone company to successfully bid

for spectrum against deep-pocket players with far greater financial resources" (id.).

On the contrary, the reduced costs and efficiencies of rural telephone companies in building and operating new PCS service in their existing service areas are very much relevant to the question of needed assistance in the competitive bidding process. The rural telephone companies will have to raise less capital to cover both the spectrum auction price and the costs of using that spectrum (infrastructure, personnel, start-up operations) if the latter costs are already partly covered in the existing business. These companies may even have a decided advantage over other companies that have no infrastructure and administration in place with which to start operations in the rural area.

The fear of USIN for the ability of a "small, rural telephone company" to compete in auction bidding is really a recognition that it is the small-business designated-entity preference that is important to small, rural telephone companies, and larger rural telephone companies not only do not need a preference but could in fact outbid small businesses. 8/

8/ RCA has asked the Commission to change the definition of rural telephone company in Section 1.2110(b)(3) to enlarge the number of entities that would qualify. See RCA Petition, p.2 n.2. The current definition requires both of two elements: 1) 50,000 access lines or fewer and (2) serving communities with 10,000 or fewer inhabitants. RCA's proposed definition would qualify an independent telephone company with either of those characteristics to be a designated entity "rural telephone company." This would increase the number of potential misuses of a preference for rural telephone companies that are not the small businesses that USIN may have in mind. What USIN has mind is in question, however, because it believes that the Commission should

Continued on following page

RCA claims in its petition (p. 6) that "[o]nce the build-out requirements are met there is no incentive for the [non-rural telephone company] narrowband PCS licensee to provide coverage to sparsely populated rural areas. The most obvious answer is that any licensee that has paid a large sum of money for use of frequencies will make as much use of those frequencies as is economically efficient, including service to rural areas. The Commission has so concluded: "We believe that narrowband PCS will be a highly competitive service and that licensees will have incentive to construct facilities to meet the demand for service in their licensed service areas." 9/

In view of the foregoing, the Commission should adhere to its decision not to give small businesses or rural telephone companies any of the preferences awarded to other designated entities with greater opportunity needs and disabilities.

Continued from previous page

broaden its definition of a small business. See USIN Petition, pp. 7-8; RCA Petition, p.8 & n.6. Such an expansion of the small-business definition would also dilute the effectiveness of a preference for small businesses meeting the current definition.

9/ Amendment to the Commission's Rules to Establish New Narrowband Personal Communications Services (First Report and Order), 8 FCC Rcd 7162, 7168 (1993).

**V. THE COMMISSION SHOULD PROHIBIT ANY SETTLEMENT
NEGOTIATIONS DURING THE COMPETITIVE BIDDING PROCESS**

In its petition (pp. 5-14), AIDE discusses the question of settlements among parties that have filed FCC Form 175 short-form applications in narrowband PCS proceedings. AIDE discusses statutory law, FCC rules and public policy factors that have favored settlements of disputes among mutually exclusive applicants in situations other than competitive bidding. AIDE states its concern that Rules Sections 1.2105 and 24.422, which, in part, create means by which the Commission intends to prevent collusive bidding in auctions of frequencies, will be read to defeat Section 24.429(b), which provides for settlements among parties to PCS narrowband proceedings. ^{10/}

PageNet agrees with AIDE that settlements in PCS proceedings would appear to be prohibited by a careful reading of the rules. PageNet does not agree with AIDE, however, that such a reading is bad public policy or contrary to Section 309(j) of the Communications Act. Rather, PageNet believes that it is essential, in order to avoid collusive bidding practices through the exchange of information ostensibly for settlement purposes, that Rules Section 24.429(b) be read in the light of the anti-collusion rules not to permit settlement discussions so long as there are mutually exclusive applicants contending in the auction process.

^{10/} AIDE does not cite Section 24.422 or Form 175 by their numbers but refers to their requirements as described in the Report and Order (see AIDE petition, pp. 10-11).

Section 24.429(b) states as follows:

(b) Policy. Parties to contested proceedings are encouraged to settle their disputes among themselves. Parties which, under a settlement agreement, apply to the Commission for ownership changes or for amendment or dismissal of either pleadings or applications, shall at the time of filing notify the Commission that such is the result of an agreement or understanding.

Subsection (a) of Section 24.429, however, states that the applicability of the section is "[s]ubject to the provisions of Sec. 1.2105 (Bidding Application and Certification Procedures; Prohibition of Collusion)" Section 1.2105(a)(2) includes provisions pertaining to the content of the Form 175 application, including:

(viii) An exhibit, certified as truthful under penalty of perjury, identifying all parties with whom the applicant has entered into partnerships, joint ventures, consortia or other agreements, arrangements or understandings of any kind relating to the licenses being auctioned, including any such agreements relating to the post-auction market structure. All such arrangements must have been entered into prior to the filing of Form 175 and no such arrangements may be entered into after the filing of Form 175 until after the winning bidder has made the required down payment.

(ix) Certification under penalty of perjury that it [the applicant] has not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties other than those identified pursuant to subsection (viii) regarding the amount of their bids, bidding strategies or the particular license on which they will or will not bid.

Further, subsection (c) of Section 1.2105 states as follows:

(c) Prohibition of Collusion. After the filing of short-form applications, all bidders are prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies with other bidders until after the high bidder makes the required down payment, unless such bidders are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application.

These rules demonstrate the Commission's clear and cogent resolve to prevent collusive bidding in upcoming auctions. Because there is no way for mutually exclusive applicants in auction proceedings to come to an agreement on settlement (including a merger) without exchanging the same kinds of information that would be exchanged for the purpose of collusive strategies in the auction bidding, no settlement discussions should be permitted to take place prior to the selection of a winner from among the Form 175 applicants. 11/

The Commission's anti-collusion policy is implemented in part by Rules Section 24.422(b), which specifies for narrowband PCS the restrictions of the earlier adopted, more generally applicable Section 1.2105 quoted above. Section 24.422(b) states:

(b) In the Narrowband PCS, the only amendments to FCC Form 175 which will be permitted are minor amendments to correct minor errors or

11/ Examples of the kinds of information that would be useful to a bidder in formulating bidding strategies include, with respect to every other applicant, the number and identity of frequency blocks sought, the value an applicant put on a frequency, or portion thereof, the uses to which the frequencies would be put, available capital, additional capital needs, and plans for construction.

defects such as typographical errors. All other amendments to FCC Form 175, such as ownership changes or changes in the identification of parties to bidding consortia, will be considered to be major amendments. An FCC Form 175 which is amended by a major amendment will be considered to be newly filed and cannot be resubmitted after applicable filing deadlines. See also Section 1.2105.

The just-quoted Section 24.422(b) is obviously to be read in conjunction with Section 1.2105 and its purposes, and, therefore, it is not unintended or contrary to the public interest for the Commission, by prohibiting major amendments "such as ownership changes or changes in the identification of parties to bidding consortia," to effectively prohibit all settlement agreements during the bidding process.

Contrary to AIDE's argument, it is not against public policy for the Commission to prohibit even market-wide settlements in this situation because, as explained above, there is no way for applicants to reach such an agreement except by the forbidden path of information exchanges which would undermine the anti-collusion prohibitions. Nor is any delay of service to the public which may result from the auction process likely to be a lengthy one, unlike the situation in the Los Angeles cellular case relied upon by AIDE, in which a comparative hearing was the prescribed result of mutually exclusive applications. ^{12/}

To be weighed against the high risk of collusion arising from settlement negotiations in any given market is the weakness of any

^{12/} See Advanced Mobile Phone Service, Inc., 93 FCC 2d 683, 690 (1983).